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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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JUN 23 1997

Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Part 1 of the) WT Docket No. 97-82
Commission's Rules --)
Competitive Bidding Proceeding)

To: Acting Chief, Wireless Telecommunications Bureau

COMMENTS OF
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SUMMARY

ChaseTel commends the Commission's consideration of C Block debt structuring proposals. At a minimum, the Commission should adopt the following recommendations:

- The Commission should defer C Block interest payment obligations for six years, during which no principal or interest payments will be due, with simple interest continuing to accrue throughout this period.
- After the sixth year, payments of interest and principal should be made over the next four years on a quarterly basis under a ten-year amortization schedule, with a balloon principal payment in the tenth year of the license.
- The applicable interest rate should be revised for all C Block licensees to 6.5%.
- The Commission should increase the equity percentage allowed for non-small businesses in C Block licensees to 37.5%.
- The Commission should reduce or remove the holding and limited transfer period imposed on C Block licensees.
- The Commission should relinquish its automatic license repossession rights in the event of a default and permit C Block licensees to obtain financing on senior, or even senior secured, terms.

These measures will serve the public interest by allowing new competitors to begin providing wireless services, consistent with the original intent of the C Block rules.

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**COMMENTS OF
CHASE TELECOMMUNICATIONS, INC.**

Chase Telecommunications, Inc. ("ChaseTel")¹ hereby submits its comments in the above-captioned proceeding.

I. INTRODUCTION

The significant changes in the financial and regulatory climates that have occurred since the Commission's initial adoption of competitive bidding rules for small businesses and entrepreneurs place those rules at odds with the public interest and the viability of PCS C Block licensee provision of wireless service. A properly designed reformation of the installment payment plan for C Block licensees will afford the flexibility needed to introduce robust competitive forces into the wireless markets. ChaseTel herein proposes a plan that offers a timely

¹ ChaseTel is the small business PCS C Block licensee for 11 contiguous BTAs covering the State of Tennessee and surrounding areas.

solution to the financial challenges that confront C Block licensees and best serves the public interest.

II. THE COMMISSION SHOULD ADOPT A PLAN THAT PROVIDES SIGNIFICANT AND TIMELY OPPORTUNITIES FOR C-BLOCK LICENSEES.

ChaseTel commends the Commission for its consideration of C Block debt restructuring which will benefit consumers by expediting and promoting the provision of wireless services by the C Block licensees. Two guiding principles must inform the Commission's ultimate adoption of a specific plan, both of which have informed ChaseTel's specific restructuring proposals.

First, the plan must afford the entrepreneurs and small businesses that are the holders of C Block licenses a meaningful opportunity to attract the capital necessary to build out their systems and provide service. Such was the Commission's original stated goal in instituting the installment payment plan² and that goal should continue to inform the Commission's consideration of the C Block debt restructuring.

Second, the debt restructuring plan must be effected within a short period of time. Timing is critical. Because of delays in the C Block auction process, C Block licenses were awarded significantly later than those awarded to their A and B Block competitors. Service rollout cannot be delayed much longer

² Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532 at ¶ 129 (1994) (the Commission noting that its "goals are to create significant opportunities for entrepreneurs [and] small business . . . [to] attract sufficient capital to build-out those licenses and provide service") ("Fifth Report and Order").

without an increasing risk that the effectiveness of the C Block licensees will be eroded. Moreover, the C Block licensees have significant obligations to the private parties who have provided financing for their down payments and initial operations, and those financing sources require prompt assurance that the licensees will gain the access to the capital markets necessary for them to complete their networks. ChaseTel commends the Commission on its rapid consideration of these crucial issues and urges it to adopt a solution that allows C Block carriers to obtain the financial strength necessary, in a timely manner, to provide competitive personal communications services.

Specifically, ChaseTel recommends, at a minimum, the adoption of the following five points for a debt restructuring plan. First, the Commission should defer C Block interest payment obligations for six years, during which no principal or interest payments will be due,³ with simple interest continuing to accrue throughout this period. Licensees must devote the first six years of the license term to network construction and marketing activities, both of which will entail expenditures far in excess of operating revenues, until they reach the point of positive operating cash flow. Deferral of interest payments will permit the C Block licensees to pay for their licenses out of the

³ See Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues, Public Notice, DA 97-679, Appendix C ("Fortunet") (suspend installment payment for five years); id. at Appendix E ("General Wireless") (five year suspension of installment payments).

operating earnings gleaned from the provision of services to consumers, and avoid the unseemly prospect of borrowing in the high-interest capital markets for the sole purpose of paying interest on the government debt. This proposed timing modification serves the public interest by harmonizing the payment schedule with the provision of services and promotes rapid build-out.

Second, after the sixth year, payments of interest and principal should be made over the next four years on a quarterly basis under a ten-year amortization schedule, with a balloon principal payment in the tenth year of the license.⁴ This payment schedule is consistent with the Commission's construction requirements, which require substantial construction after the first five years of licensing.⁵ In fact, market incentives suggest that many C Block licensees will exceed the minimum construction requirements by year five. In light of these market incentives and construction requirements, ChaseTel believes it is reasonable to expect and demand C Block licensees to be sufficiently established to successfully meet their installment payment obligations after the sixth year.

Third, the applicable interest rate should be revised for all C Block licensees to 6.5%.⁶ ChaseTel, in conjunction with

⁴ See Fortunet (extend repayment term from ten to twenty years); see also General Wireless (extend repayment term to fifteen years with a balloon principal payment in fifteenth year).

⁵ See 47 C.F.R. § 24.203.

⁶ See Fortunet (interest rate should be 6.51%).

Indus, Inc., files today in a related proceeding comments supporting this proposition.⁷ In short, the imposition of a uniform rate of 6.5% on all relevant small businesses participating in the installment payment plan is consistent with the notion of according regulatory symmetry to CMRS providers and parallels the administrative law principle of affording similar treatment to similarly-situated entities.

The first three points of the ChaseTel plan reduce the potential for adverse consequences by relieving the immediacy of the C Block licensee installment payment obligations. The Commission can simultaneously adopt affirmative measures to increase the potential for favorable results by implementing points four and five of the ChaseTel plan.

Specifically, the Commission should increase the equity percentage allowed for non-small businesses in C Block licensees to 37.5%. The Commission recognized the importance of granting small business licensees "a reasonable measure of flexibility in obtaining needed financing from other entities."⁸ Moreover, the Commission noted its willingness to consider a revision of its voting stock limitations in the event that its rule proved too restrictive for small businesses.⁹ The need for flexibility and the Commission's willingness to revisit over-restrictive limits

⁷ See 7 Percent Interest Rate Imposed on C Block Installment Payment Plan Notes, DA 97-1152, *Comments of Indus, Inc. and Chase Telecommunications, Inc.* (filed June 23, 1997).

⁸ Fifth Report and Order at ¶ 159.

⁹ Id. at n.137.

compels a reexamination of the non-small business equity limits.

A 37.5% non-small business stake in a company does not eliminate the small business essence of the enterprise. Yet, circumscription of available financial resources, a consequence of the non-small business ownership restriction, restrains small business participation in the provision of spectrum-based services. By definition, small businesses are thinly capitalized operations.¹⁰ Their primary impediment to successful provision of wireless services is the lack of access or higher costs of access to capital.¹¹ The 25% equity limit eliminates from consideration a significant investor pool for C Block licensees. The Commission should encourage viability of small businesses in a manner that reflects natural market forces rather than compelling small business participation in the wireless industry under unfavorable financial restrictions. The 25% equity standard for control should be raised to 37.5%.

Finally, the Commission should reduce or remove the holding and limited transfer period imposed on C Block licensees. The

¹⁰ See 47 C.F.R. § 24.720(b)(1) ("a small business is an entity that, together with its affiliates and persons or entities that hold interest in such entity and their affiliates, has average annual gross revenues that are not more than \$40 million for the preceding three years); see also 47 C.F.R. § 24.709(a)(1) (C or F Block applicants must have gross revenues of less than \$125 million in each of last two years and total assets of less than \$500 million).

¹¹ See Fifth Report and Order at ¶ 10 ("The record clearly demonstrates that the primary impediment to participation by designated entities is lack of access to capital. This impediment arises for small businesses from the higher costs they face in raising capital").

transfer limitations reduce the value of the affected licenses, diminishing their attractiveness to potential financial investors. It is a fundamental principle of property law that restrictions on transferability reduce the value of property and disserve the public interest.¹² Despite the Commission's inability to grant property rights in licenses,¹³ it has recognized the benefits of imbuing licenses with characteristics of property rights as a means of encouraging the full and intensive use of the spectrum.¹⁴ The transfer restrictions contradict the Commission's recognition of the public benefits of quasi-property rights in licenses.

Just as auctions are designed to ensure that spectrum is assigned to the entity that most values the right to use the spectrum,¹⁵ free transfer opportunities will ensure that the

¹² "[O]ne of the incidents of ownership of property is the right to convey it . . . [so a] general restraint on alienation is ordinarily void." 61 Am. Jur. 2d Perpetuities and Restraints on Alienation § 100 (1981) (discussing the "rule against perpetuities"). The D.C. Circuit Court has long adopted this common law principle. See, e.g., Gertman v. Burdick et al., 123 F.2d 924, 931 (App. D.C. 1941).

¹³ See 47 U.S.C. § 301.

¹⁴ See, e.g., Amendment of the Commission's Rules to Establish New Narrowband Personal Communications Services, First Report and Order, 8 FCC Rcd 7162, ¶ 35 (1993) (narrowband PCS licenses have ten year term and renewal expectancy to encourage licensees to invest in their systems). See also Gregory L. Rosston and Jeffrey S. Steinberg, Using Market-Based Spectrum Policy to Promote the Public Interest (Jan. 1997) at 21 (on file with Federal Communications Commission).

¹⁵ See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Second Report and Order in PP Docket No. 93-253, 9 FCC Rcd 2348 at ¶ 5 (1994) (competitive

spectrum continues to be used by the entity placing the highest value on its use. Ultimately, the public benefits from this "ongoing auction process." For these reasons, the Commission should remove the transfer restrictions placed upon C Block licenses.

In addition to the foregoing five-point proposal, ChaseTel recommends a plan to promote private debt financing of small business wireless licensees through a modification of the license security terms. The reluctance of capital markets to invest in wireless licensees is well documented before the Commission.¹⁶ The limited capital resources that define the C Block's status presuppose a crying need for capital and credit compounded by the Commission's license security terms. Under these circumstances, the manifest difficulties encountered by the C Block in raising capital are unsurprising but these difficulties have been unintentional and unfortunate.

The Commission's absolute right to cancel the license in the event of default has deterred the extension of credit from outside lenders needed to build out the C Block. Thus, a provision designed to enhance the value of the C Block debt to

bidding will result in "[a]warding licenses to those who value them most highly. . . .").

¹⁶ See Fortunet ("once the [C Block] spectrum was finally auctioned, financial markets unexpectedly plunged"); see also NextWave Personal Communications, Inc. Petition for Temporary Waiver of the Foreign Ownership Limitations, File Nos. 00341CWL96 et al. at n.17 (April 10, 1997) (on file with the Federal Communications Commission) (citing news articles regarding diminished value of stocks and bonds in the wireless telecommunications sector).

the U.S. Treasury has in practice served only to diminish its value. To correct this paradoxical result, the Commission should relinquish its automatic repossession rights in the event of a default and permit C Block licensees to obtain financing on senior, or even senior secured, terms. By subordinating its C Block debt, the Commission will actually enhance its value by permitting the C Block licensees to attract the private investment they require. The substantial funds made available by this measure will advance the public interest in providing service and will serve the Treasury's interest in repayment. Such a step-down in seniority conforms to traditional financing practices in situations such as this, and affords the Treasury, in the event of any future default, with all of the traditional remedies available to creditors in insolvency situations.

III. C BLOCK DEBT RESTRUCTURING WILL SERVE THE PUBLIC INTEREST.

The Commission's installment payment plan for small businesses was designed to implement Congress' directive to facilitate the participation of small businesses in the provision of spectrum-based services.¹⁷ The underlying goal of the plan remains valid. However, certain provisions of the C Block rules hinder, rather than promote, the financial activities of small businesses.

By reforming -- rather than abandoning -- the installment payment plan, the Commission will reaffirm its goal of promoting the participation of small businesses in the provision of

¹⁷ See 47 U.S.C. § 309(j)(4)(C).

wireless services. More importantly, a restructuring will enhance public welfare by allowing new competitors to begin providing wireless services. The market itself should determine a carrier's success or failure based upon the rates and services a carrier offers the public. C Block financial failure on the basis of rates or service quality inferiority would be a positive function of the market. By contrast, C Block financial failure due, in part, to regulations that do not advance the larger goals of the Communications Act ("Act") would ill-serve consumer welfare. ChaseTel does not suggest that the Commission attempt to protect carriers from market functions. However, the Commission does have an obligation to the public interest to prevent diminution of choice resulting from regulatory inflexibility.

**A. THE COMMISSION IS COMPELLED TO REVISIT ITS C BLOCK
INSTALLMENT PAYMENT PLAN.**

The C Block rules were adopted on the basis of a set of assumptions about the markets for wireless services and for the capital needed to finance them, all of which require reexamination in light of recent experience and changed circumstances. While it had been assumed that the A, B and C Block licenses would be awarded substantially concurrently, in point of fact the C Block licenses were awarded substantially later, giving the A and B Block licensees preferential access to the consumer and financial markets. As a result, otherwise available financing resources have already filled their wireless portfolios on A and B Block paper, requiring new initiatives on the part of the C Block to encourage them to take a second look.

Moreover, the large number of wireless auctions has reversed the prior perception of spectrum scarcity and created fears in the capital markets of a spectrum glut. The remaining finance options are either exceedingly expensive for viability or remain prohibited under the Commission's rules. In the meantime, the A and B Block PCS carriers have begun offering service across the country, and cellular operators are fortifying their competitive positions in the market by offering digital services, often branded as "PCS." Since C Block carriers have not been able to obtain financing, they have not even begun to provide service. Circumstances have changed radically from the level playing field originally envisaged by the rules.

When confronted with changed circumstances, the Commission is obliged to revisit its applicable regulations.¹⁸ The D.C. Circuit observed that "the agency cannot sidestep a reexamination of particular regulations when abnormal circumstances make that course imperative."¹⁹ Separately, the D.C. Circuit noted the Commission's "duty to evaluate its policies over time to ascertain whether they work - that is, whether they actually produce the benefits the Commission originally predicted they would."²⁰ In light of the dramatic change in the financial and regulatory environment, revisitation of the C Block installment

¹⁸ See, e.g., Bechtel v. F.C.C., 957 F.2d 873, 881 (D.C. Cir. 1992) ("[C]hanges in factual and legal circumstances may impose upon the agency an obligation to reconsider a settled policy . . .").

¹⁹ Geller v. F.C.C., 610 F.2d 973, 979 (D.C. Cir. 1979).

²⁰ Bechtel v. F.C.C., 957 F.2d at 881.

payment plan is not just a matter of sound policy, it is a Commission obligation, as well.

B. C BLOCK DEBT RESTRUCTURING WILL ENHANCE CONSUMER WELFARE.

As explained in Section II, the installment payment formula initially adopted by the Commission fails to offer the flexibility necessary for providing real opportunities to small businesses. The restrictions on financing opportunities threaten the realization of small business participation in PCS. The Commission's overriding obligation to serve the public interest compels the flexibility necessary to reform the installment payment plan for C Block licensees.

It is self-evident that an increase in the number of wireless providers promised by the C Block heightens the level of competition in the wireless industry to the benefit of consumers. In addition, the participation of small businesses and entrepreneurs in this market will add a level of innovation in service offerings and pricing plans to fill niches ignored by the large incumbent carriers. Promotion of small business provision of CMRS continues to be a valid policy goal because it promises to best serve the public interest. A diminution in the number of carriers competing in the wireless market due to regulatory inflexibility ultimately reduces consumer welfare.

The Commission appears to recognize the principle that the actual use of the spectrum is in the public interest. Recently in this docket, the Commission noted that "[m]arket-oriented solutions to problems of financial distress will often be preferable to the FCC reclaiming and reauctioning licenses.'

This is particularly true when reclaiming a license would deprive or interrupt service to ongoing end users."²¹ The Commission's observation is consistent with its statutory duty to ensure the efficient and intensive use of the spectrum.²²

The Commission also retains a statutory obligation to secure recovery of a portion of the value of auctioned spectrum.²³ Although the Commission retains the authority to revoke a carrier's license in the event of a carrier's failure to satisfy its debt obligations, it is clear that the Act and sound regulatory policy counsel against this end. When the Commission's value recovery obligation conflicts with the promotion of small business provision of wireless services, it is subsumed by the weight of statutory directives, especially when such a result promotes consumer welfare. For example, the Act prohibits a public interest finding based predominantly on Federal revenue expectancies when seeking to provide economic opportunities for small businesses.²⁴ Moreover, as stated above, the Act compels the Commission to promote the efficient and

²¹ Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding, WT Docket No. 97-82, *Order, Memorandum Opinion and Order and Notice of Proposed Rulemaking*, 6 Comm. Reg. 362 at ¶ 13 (1997).

²² See 47 U.S.C. § 309(j)(3)(D).

²³ See 47 U.S.C. § 309(j)(3)(C).

²⁴ See 47 U.S.C. § 309(j)(7)(A) (specifically referring to the limitation on consideration of revenue generation when prescribing regulations for the participation of small businesses in the provision of spectrum-based services).

intensive use of the spectrum²⁵ and to disseminate licenses among a wide variety of applicants, including small businesses.²⁶ Further, the Commission is obligated to promote the rapid deployment of precisely the innovative technologies and services that entrepreneurs are apt to provide.²⁷ In sum, statutory and policy goals direct the Commission to promote the consumer welfare through facilitation of C Block license retention.

²⁵ See 47 U.S.C. § 309(j)(3)(D).

²⁶ See 47 U.S.C. § 309(j)(3)(B).

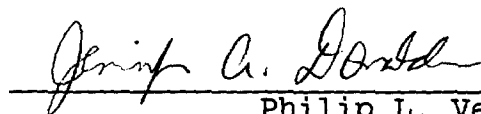
²⁷ See 47 U.S.C. § 309(j)(3)(A).

IV. CONCLUSION

For the foregoing reasons, the Commission should adopt a C Block restructuring plan consistent with the proposals made herein.

Respectfully submitted,

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